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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF:

Isabelle AFRIAT

SERIAL NO.: 09/884,949

FILED: JUNE 21, 2001

EXAMINER: WELLS

GROUP ART UNIT: 1617

FOR: COMPOSITION IN THE FORM OF
A WATER-IN-OIL EMULSION WITH
A VARIABLE SHEAR RATE AND
METHODS OF USING THE SAME

RECEIVED
JAN 27 2004
TECH CENTER 1600/2900

DECLARATION UNDER 37 C.F.R. 1.132

ASSISTANT COMMISSIONER FOR PATENTS
WASHINGTON, D.C. 20231

SIR:

I, Veronique CHEVALIER, hereby declare:

1. I am employed by L=ORÉAL as an engineer and have experience in the field of emulsions, particularly water-in-oil (W/O) emulsions, and their use in cosmetic and/or dermatological compositions.

2. I have previously submitted two declarations in support of the above-referenced application in which I discuss and explain certain observations and experiments relating to the claimed invention in this application.

3. I have read the Office Action dated October 23, 2003, in which certain questions or concerns were raised relating to my previous declarations. Set forth below are answers to these questions or concerns.

4. Regarding the Office Action's assertion that no data exists showing that formulation nos. 658462-2 and 658463-3 readily break, it is my understanding that graphs depicting this data were inadvertently not attached to my August 18, 2003, declaration. Attached hereto at Tab A is a copy of these graphs, the top graph corresponding to 658462-2 and the bottom graph corresponding to 658463-3. These graphs indicate that these two formulations readily break.

5. Regarding the Office Action's assertion that no data exists showing that Example 1 of the present application or CM 3/1 readily break, Example 1 is AReference P5≅ discussed in my July 24, 2002, declaration. Thus, data has been provided for this invention composition. Regarding CM 3/1, the portion of the graph reflecting that this composition breaks is at 240 Pa. However, because CM 3/1 contains only 79.83% aqueous phase and, thus, is on the outer limits of the claimed invention, the breaking of this composition is more difficult to determine than for compositions containing more aqueous phase.

6. Regarding the Office Action's assertion that the reproduction of Mellul=s compositions as CM 3/3, CM 3/4 and CM 3/5 was inappropriate because Mellul was not followed exactly, Mellul=s col. 7, line 57, and col. 8, line 6 indicate that glycerin and sodium chloride can be added to Mellul=s compositions, so their addition to CM/3, CM/4 and CM/5 is appropriate. Moreover, their presence or absence would not be expected to materially alter the properties of the resulting composition. Furthermore, KF 6015 was

used instead of KF 6017 because Mellul indicates that these dimethicone copolyols are interchangeable and because KF 6015 was readily available. (See, Mellul at col. 8, line 47). Finally, hydrocarbon surfactant found in Mellul=s example 24 was not included in CM/3, CM/4 and CM/5 because Mellul=s Tables I and II (col. 13) indicate that the presence of hydrogen surfactant results in a very unstable emulsion, whereas silicone surfactant results in a stable emulsion. Because we were attempting to create the most stable emulsion we could in accordance with Mellul=s teachings, we did not utilize Mellul=s hydrocarbon surfactant.

7. Regarding the Office Action's assertion that given the data points provided it is not possible to determine if CM 3/5 has a break property at shear stress greater than 100 Pa, it is impossible to apply a greater stress to CM 3/5 because this composition is too fluid. In contrast, the cream-like compositions of the present invention are thicker, so more shear stress can be applied to them.

8. The undersigned petitioner declares further that all statements made herein of her own knowledge are true and that all statements made on information and belief are believe to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon.

9. Further deponent sayeth not.

Veronique Chevalier
Name

Veronique Chevalier V.Chel
Signature

16th / January 2004
Date